

REMARKS

SUMMARY

Reconsideration of the application is respectfully requested.

Claims 1-5, 9, 11-15, 18-40, 47-52, and 56-66 are in the application. Claims 1-2, 4-5, 9, 11-15, 18-32, 37-38, 40, 47-48, 50-52, and 56-66 have been rejected by the Examiner. Claims 12-13, 28-29, and 37-38 are objected to by the Examiner because of informalities. Claims 3 and 49 are objected to as depending upon rejected base claims. Claims 33-36 and 39 have been allowed.

Applicants request clarification regarding the status of claim 39. The above-identified Office Action both allows the claims and rejects it under the judicially created doctrine of obviousness-type double patenting. Applicant further requests clarification regarding the status of claims 31 and 32. Both claims are rejected only under “Double Patenting,” but unlike claim 39 above, neither claim 31 nor 32 is listed as allowed.

Applicants appreciatively acknowledge the Examiner’s allowance of claims 33-36 and 39. Also, Applicants appreciatively acknowledge the Examiner’s consideration of the arguments filed on April 4, 2005.

Double-Patenting

1. In “Double Patenting,” item 2 on page 2 of the above-identified Office Action, claims 21 and 60 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,850,782 to *Bright et al.* (hereinafter “**BRIGHT**”), which is owned by the same entity as the present application. Applicants respectfully traverse as claim 1 of **BRIGHT** is limited to sending and receiving “signals for text messages with alphanumeric data,” and vibrationally outputting received text messages through a vibrator that is coupled to the wireless device. The present application, as claimed in claims 21 and 60, is not limited to the sending and receiving of text messages. Claims 21 and 60 recite no such limitation. Rather, the vibrator of claims 21 and 60 vibrationally outputs alphanumeric data that may or may not constitute text messages. Further, claims 21 and

60 of the present invention recite the additional limitation of an adapter interface. Instead of being directly coupled to the phone, as is claimed in claim 1 of **BRIGHT**, the vibrator of claims 21 and 60 of the present invention is connected to the wireless device by an adapter interface, which allows the vibrator of claims 21 and 60 to be removably attached. **BRIGHT** claim 1 simply does not recite the additional limitation that the vibrator be removably attached.

When a double patenting rejection is appropriate, it must be based either on statutory grounds or nonstatutory grounds. The ground of rejection employed depends upon the relationship of the inventions being claimed. In the instant case, the above-identified Office Action indicates that a nonstatutory obviousness-type double patenting rejection is being asserted. **BRIGHT** is improperly identified as possessing conflicting claims, which are not identical, but are allegedly not patentably distinct from the claims of the instant application.

Obviousness-type double patenting should only reject application claims when the claimed subject matter is not patentably distinct from the subject matter claimed in a commonly owned patent when the issuance of a second patent would provide unjustified extension of the term of the right to exclude granted by a patent. See Eli Lilly & Co. v. Barr Labs., Inc., 251 F.3d 955, 58 USPQ2d 1865 (Fed. Cir. 2001); Ex parte Davis, 56 USPQ2d 1434, 1435-36 (Bd. Pat. App. & Inter. 2000). In the instant case, claim 1 of the **BRIGHT** is limited to sending and receiving text messages, unlike claims 21 and 60 of the instant application. Further, claim 1 of **BRIGHT** fails to recite a key limitation found in claims 21 and 60 of the present application that the vibrator be “removably attached” to the wireless device through an adapter interface. Therefore, withdrawal of the provisional rejection is respectfully requested.

Should the Examiner determine that claim 1 of **BRIGHT** and claims 21 and 60 of the instant application are “not patentably distinct” as asserted by the Applicants, the Applicants will, upon issuance of the instant application, submit the necessary Terminal Disclaimer for the remaining application. Thus, there will be no double patenting.

2. In “Double Patenting,” item 3 on page 2 of the above-identified Office Action, claims 31-32 and 39 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of **BRIGHT**. Applicants respectfully traverse. Claim 5 of **BRIGHT** depends on claim 1 of that patent, and the above-discussed differences between claim 1 of **BRIGHT** and claims 21 and 60 of the instant application also apply here. Claim 5 of **BRIGHT**, unlike claim 31 of the instant application, limits itself to the sending and receiving of text messages. Claim 31 of the present application contains no similar limitation. Further, claim 5 of **BRIGHT** lacks the limitation disclosed in claim 31 of the instant application reciting that the vibrator be removably attached to the wireless device through an adapter interface. In addition to the above cited deficiencies, claim 5 of **BRIGHT** also fails to teach a light source and at least a first input button – distinct from the input keypad – that is optically associated with the light source. The light source and input button(s) are key features of claim 31.

When a double patenting rejection is appropriate, it must be based either on statutory grounds or nonstatutory grounds. The ground of rejection employed depends upon the relationship of the inventions being claimed. In the instant case, the above-identified Office Action indicates that a nonstatutory obviousness-type double patenting rejection is being asserted. **BRIGHT** is improperly identified as possessing conflicting claims, which are not identical, but are allegedly not patentably distinct from the claims of the instant application.

Obviousness-type double patenting should only reject application claims when the claimed subject matter is not patentably distinct from the subject matter claimed in a commonly owned patent when the issuance of a second patent would provide unjustified extension of the term of the right to exclude granted by a patent. See *Eli Lilly & Co. v. Barr Labs., Inc.*, 251 F.3d 955, 58 USPQ2d 1865 (Fed. Cir. 2001); *Ex parte Davis*, 56 USPQ2d 1434, 1435-36 (Bd. Pat. App. & Inter. 2000). In the instant case, claim 5 of the **BRIGHT** is limited to sending and receiving text messages, unlike claim 31 of the instant application. Further, claim 5 of **BRIGHT** fails to recite a key limitation found in claim 31 of the present application that the vibrator be “removably attached” to the wireless device through an adapter interface. Additionally, claim 5

of **BRIGHT** also fails to recite a light source or input button(s) coupled to the light source, key features of the invention of claim 31. Therefore, withdrawal of the rejection is respectfully requested.

Claims 32 and 39 depend from claim 31. Therefore, for at least the same reasons mentioned above, claims 32 and 39 are patentably distinct from claim 5 of **BRIGHT**. Therefore, withdrawal of the rejection of those claims is also respectfully requested.

Should the Examiner determine that claim 5 of **BRIGHT** and claims 31-32 and 39 of the instant application are “not patentably distinct” as asserted by the Applicants, the Applicants will, upon issuance of the instant application, submit the necessary Terminal Disclaimer for the remaining application. Thus, there will be no double patenting.

### **Claim Objections**

Claims 12-13, 28-29, and 37-38 are objected to by the Office Action for failing to be “complete in themselves.” According to the Office Action, the above claims incorporate by reference “a specific figure or table.” As the Office Action states, and Applicants readily concede, such incorporation by reference “is permitted only in exceptional circumstances where there is no practical way to define the invention in words and where it is more concise to incorporate by reference than **duplicating a drawing or table into the claim**” (citing *Ex parte Fressola*, 27 USPQ2d 1608, 1609 (Bd. Pat. App. & Inter. 1993) (emphasis added). Applicants, however, did not incorporate tables by reference into claims 12-13, 28-29, and 37-38. Rather, Applicants followed the course suggested by *Ex parte Fressola* and **duplicated** tables into the claims. Therefore, Applicants have not, as suggested by the Office Action, incorporated by reference tables or figures. Withdrawal of the objection is respectfully requested.

### **Claim Rejections under 35 U.S.C. § 103**

To establish obviousness under 35 U.S.C. § 103, the Examiner must meet the standard set forth by the Supreme Court in *Graham v. John Deere Co.* That standard requires that the Examiner (1) determine the scope and content of the prior art; (2) ascertain the differences

between the prior art and the claims in issue; (3) resolve the level of ordinary skill in the art; and (4) evaluate evidence of secondary considerations. 383 U.S. 1, 17-18 (1966); *see also* MPEP 2141. Secondary considerations include whether the invention met with commercial success, whether the invention answered a long felt need, and whether others attempting the invention have failed. *Graham*, 383 U.S. at 17-18. Further, in applying the *Graham* framework, the Examiner must consider the invention as a whole, without the benefit of hindsight. MPEP 2141.

1. In “Claim Rejections – 35 USC § 103,” item 5 on page 3 of the above-identified final Office Action, claims 1-2, 9, 11-15, and 18-20 have been rejected as being unpatentable over U.S. Patent No. 5,966,671 to *Mitchell, et al.* (hereinafter “**MITCHELL**”) in view of U.S. Patent No. 6,208,993 to *Anderson* (hereinafter “**ANDERSON**”) under 35 U.S.C. § 103(a).

**ANDERSON** teaches a hearing aid or audio communication system that includes an earpiece which communicates wirelessly with a remote processing unit (RPU). The RPU contains a digital signal processor which contains information such as the time of day and provides it to the bearer of the hearing aid by using a synthesized voice message. The RPU also enables user control of hearing aid parameters through the use of “**pushbuttons** located on the RPU (including **pushbuttons** suitable for data entry in a covert manner).” As taught by **ANDERSON**, these **pushbuttons** can include Morse code keys.

In contrast, the present application as claimed in claim 1 recites “**at least a first button**” that can be used to enter “alphanumeric data or **phrases having one or more words** in encoded representations of a variable length encoding scheme.” The encoding scheme can be Morse code or any other variable length coding scheme “having a plurality of codes of various code lengths representing a phrase and a vowel respectively, and the first code length being shorter than the second code length.”

Taking the prior art as a whole and comparing it to the present invention as claimed in claim 1, two significant differences emerge. First, **ANDERSON** does not disclose the entry of codes covertly through a **single** pushbutton. Rather, the RPU of **ANDERSON** teaches the entry

of Morse code through *multiple* pushbuttons, and does not teach or suggest the entry of Morse code or of a similar code meeting the requirements of claim 1 by use of a **single** push button. In contrast to **ANDERSON**, the invention of claim 1 allows for the entry of coded alphanumeric data or phrases having one or more words through a **single** input key. Thus, the present invention of claim 1 improves upon the covert data entry of **ANDERSON** by allowing such entry to be performed with one key rather than two or more. Nothing in the combination of **MITCHELL** and **ANDERSON** suggests the use of one button for entry of encoded data or phrases. Therefore, for at least this reason, the combination of **MITCHELL** and **ANDERSON** fails to render claim 1 obvious.

In addition to the first difference described above, **MITCHELL** and **ANDERSON** further fail to teach or disclose the entry of a “**phrase**.” The word “**phrase**,” as used in claim 1, does not refer merely to alphanumeric data. If that were its meaning it would render the language of the claim duplicative and objectionable. Instead, the word **phrase** as used in claim 1 has the meaning given to it by the specification. In the specification, the shortest codes of the encoding language are reserved for special programmable words that are either programmable by the user or provided to the user. These phrases are intended to be frequently used words or strings of words, although they can constitute any string of one or more words. The Office Action, however, appears to equate “**phrases**” with the *alphanumeric data* of **ANDERSON** by maintaining that **ANDERSON** discloses the use of input keys to “facilitate entry of alphanumeric data or phrase having one or more words.” **ANDERSON** only teaches the entry of *alphanumeric data*. Nowhere in **ANDERSON** does one find anything approaching the **phrase** described by the present application’s specification or for that matter anything else that could be described as a **phrase**. Only by interpreting “**phrase**” in claim 1 of the instant application to mean alphanumeric data, an interpretation clearly at odds with the express language of the claim, can the Examiner maintain that **ANDERSON** teaches the use of input keys to “facilitate entry of alphanumeric data or phrase having one or more words.” Therefore, the combination of **MITCHELL** and **ANDERSON** fails to render claim 1 obvious.

Thus, the prior art, taken as a whole, fails to teach two features key to the structure of the claimed invention: the potential for using one button to enter the coded data or phrases, and the use of phrases distinct from alphanumeric data. These key features illustrate a novel relationship – between maintaining a directory and storing within that directory the very tables and other non-file system structures to which the directory refers. It is these novel features, then, that differentiate claim 1 of the instant application from **MITCHELL** and **ANDERSON**. Consequently, claims 1 is patentable over the cited art.

Claims 2, 9, 11-15 and 18-20 depend from claim 1, incorporating its limitations correspondingly. Accordingly, for at least the same reasons, claims 2, 9, 11-15 and 18-20 are patentable over the cited art.

2. In “Claim Rejections – 35 USC § 103,” item 7 on page 6 of the above-identified Office Action, claims 4, 5, 21-30, 47-48, 50, 60-61, 64-65, and 66 have been rejected as being unpatentable over **MITCHELL** in view of **ANDERSON**, as applied to claim 1, and further in view of U.S. Patent No. 4,630,208 to *Le Pechon* (hereinafter “**LE PECHON**”) and U.S. Patent No. 6,732,358 to *Siefert* (hereinafter “**SIEFERT**”) under 35 U.S.C. § 103(a).

As stated above, **MITCHELL** and **ANDERSON**, taken as a whole, fail to disclose key structural features of the claimed invention. The claimed invention teaches a novel wireless device that allows for the entry of encoded alphanumeric data or phrases with one input key and also allows for phrases to be entered that are distinct from alphanumeric data. Thus, even when combined with **LE PECHON** and **SIEFERT**, the cited art fails to show novel features that are noted when the claimed invention is taken as a whole. Consequently, claims 4, 5, 21-30, 47-48, 50, 60-61, 64-65, and 66 are patentable over the combination of **MITCHELL**, **ANDERSON**, **LE PECHON** and **SIEFERT**.

3. In “Claim Rejections – 35 USC § 103,” item 8 on page 16 of the above-identified Office Action, claims 51-52 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over

U.S. Patent No. 6,631,274 to *Keshavachar* (hereinafter “**KESHAVACHAR**”) in view of **ANDERSON**.

**KESHAVACHAR** and **ANDERSON** fail to render claims 51 and 52 of the present application obvious for precisely the same reasons that **MITCHELL** and **ANDERSON** fail to render claim 1 obvious. **KESHAVACHAR** is subject to the same defects as **MITCHELL**, and here too, **ANDERSON** fails to cure those defects. Neither **KESHAVACHAR** nor **ANDERSON** teaches the entering of encoded words or phrases with one button, as claims 51 and 52 of the instant application do. Further, neither **KESHAVACHAR** nor **ANDERSON** discloses the use of encoded phrases. Therefore, for at least the same reasons as given above, **KESHAVACHAR** and **ANDERSON** do not render claims 51 and 52 obvious.

4. In “Claim Rejections – 35 USC § 103,” item 9 on page 17 of the above-identified Office Action, claims 56-57 have been rejected as being unpatentable over **MITCHELL** in view of **ANDERSON** and **KESHAVACHAR** under 35 U.S.C. § 103(a).

As stated above, **MITCHELL** and **ANDERSON**, taken as a whole, fail to disclose key structural features of the claimed invention. The claimed invention teaches a novel wireless device that allows for the entry of encoded alphanumeric data or phrases with one input key and also allows for phrases to be entered that are distinct from alphanumeric data. Thus, even when combined with **KESHAVACHAR**, the cited art fails to show novel features that are noted when the claimed invention is taken as a whole. Consequently, claims 56-57 are patentable over the combination of **MILLER**, **ANDERSON** and **KESHAVACHAR**.

5. In “Claim Rejections – 35 USC § 103,” item 10 on page 19 of the above-identified Office Action, claims 58-59 and 62-63 have been rejected as being unpatentable over **MITCHELL** in view of **ANDERSON** and **KESHAVACHAR** as applied to claim 56, and further in view of **SIEFERT**.

As stated above, **MITCHELL, ANDERSON**, and **KESHAVACHAR** taken as a whole, fail to disclose key structural features of the claimed invention. The claimed invention teaches a novel wireless device that allows for the entry of encoded alphanumeric data or phrases with one input key and also allows for phrases to be entered that are distinct from alphanumeric data. Thus, even when combined with **SIEFERT**, the cited art fails to show novel features that are noted when the claimed invention is taken as a whole. Consequently, claims 58-59 and 62-63 are patentable over the combination of **MILLER, ANDERSON, KESHAVACHAR**, and **SIEFERT**.

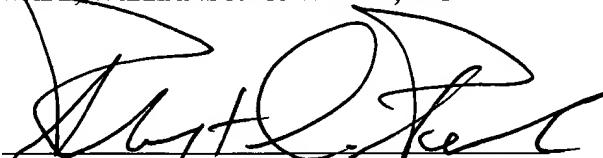
### Conclusion

Applicant submits that all pending claims, claims 1-5, 9, 11-15, 18-40, 47-52, and 56-66, are in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1513. If any fees are due in connection with this paper, the Commissioner is authorized to charge Deposit Account 500393.

Respectfully submitted,  
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by:



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